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DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Service Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 140
- 3) Section Numbers: 140.129                      Proposed Action:  
New Section
- 4) Statutory Authority: 5 ILCS 2505/2505-795; 35 ILCS 120/12 (incorporated by reference into the Service Occupation Tax at 35 ILCS 115/12)
- 5) A Complete Description of the Subjects and Issues Involved: This rule is proposed in order to explain the taxation of tangible personal property transferred as part of a seminar. Under this proposal, seminar materials that are transferred to persons as part of their attendance at a seminar are considered a service transaction and will result in tax liability under either the Service Occupation Tax Act or the Use Tax Act. The regulation provides a definition of the term, "seminar materials" and "seminar provider." The rule provides numerous examples in order to demonstrate how the Service Occupation Tax and Use Tax might apply to different seminar providers. In contrast to these transactions, the rule proposes that Retailers' Occupation Tax liability will be incurred for transactions in which a seminar provider offers seminar materials without requiring attendance. This is the case, for instance, when a seminar provider who also presents a live seminar makes his seminar materials available at a reduced price for persons not wishing to attend the live seminar. Numerous examples of these types of situations are also provided. The regulation also explains that seminar providers will generally incur Use Tax liability on items that are not considered "seminar materials" that are provided free of charge to attendees at seminars, such as coffee mugs, calendars, briefcases, and tee shirts. Finally, the regulation explains that not-for-profit organizations considered exempt by the Department (for example, as exclusively religious or charitable) incur no tax liability on seminar materials transferred incident to presentation of seminars that are in furtherance of their organizational purposes. As the regulation explains, however, these organizations may still incur Retailers' Occupation Tax liability on any retail sales made at the seminar, unless that selling is one of the three types of limited selling authorized for exempt entities. Cross-references are made throughout these regulations to other sections of Part 140 (Service Occupation Tax) in order to provide additional guidance in explaining the liability of servicemen.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect: No
- 8) Does this rulemaking contain an automatic repeal date? No

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- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Jerilynn G. Troxell  
Deputy General Counsel – Sales & Excise Taxes  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
(217) 782-2844

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: This rulemaking will affect small businesses and not-for-profit organizations that present seminars to the public or to their members.
- B) Reporting, bookkeeping or other procedures required for compliance: Standard bookkeeping procedures
- C) Types of professional skills necessary for compliance: Standard bookkeeping skills
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008.

The full text of the Proposed Amendment begins on the next page:

SUBPART A: NATURE OF TAX

**Section 140.129 Taxation of Seminar Materials**

- a) Definitions

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“Cost price” means the consideration paid by a serviceman for a purchase valued in money, whether paid in money or otherwise, including cash, credits and services and shall be determined without any deduction on account of his supplier’s cost of the property sold or on account of any other expense incurred by the supplier. When a serviceman contracts out part or all of the services required in his sale of service, it shall be presumed that the cost price to the serviceman of the property transferred to him by his subcontractor is equal to 50% of the subcontractor’s charges to the serviceman in the absence of proof of the consideration paid by the subcontractor for the purchase of such property. However, if a primary de minimis serviceman who incurs a Use Tax liability on his cost price subcontracts service work to a secondary de minimis serviceman who also incurs a Use Tax liability on his cost price, the primary serviceman will not incur Use Tax liability if the secondary de minimis serviceman has paid, or will remit, Illinois Use Tax on his cost price of any tangible personal property transferred to the primary serviceman and certifies that fact in writing to the primary de minimis serviceman.

“Non-Seminar Materials” means materials or items transferred incident to the presentation of a seminar but not related to the actual subject matter of the seminar presentation or necessary for participation in the seminar. Such items would include, but are not limited to, coffee mugs, briefcases or other promotional items. Pencils, pens, pads of paper and similar items are considered items necessary for participation in the seminar.

“Seminar” means any presentation, conference, training program, or continuing education course designed for educational, informational, professional or recreational purposes.

“Seminar Attendance” occurs when a person is required to be physically at a specific location at a specific date and time in order to participate in the seminar. For videoconferences and teleconferences, attendance occurs only when instant interactive communication with the speaker is available.

“Seminar Materials” mean any educational or informational material, and any other items of tangible personal property, prepared, compiled or otherwise obtained for distribution to seminar customers incident to the presentation of a seminar, or of a right to attend the seminar. Seminar materials include, but are not limited to: books, manuals, practice guides, study guides, outlines, audio and video tapes, compact discs, cassette tapes, and items related to the subject of the seminar.

“Seminar Provider” means a person, group, organization, association, or other legal entity that offers, organizes or presents seminars. A seminar provider does not include an organization or institution granted a Department issued exemption identification

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number ("E" number) pursuant to 35 ILCS 120/1g of the Retailers' Occupation Tax Act when conducting a seminar or course of study in furtherance of its organizational purpose.

b) Seminar Materials – Service Transactions

1) Except as provided in Subsection (c) of this Section, a seminar provider will incur either Service Occupation Tax or Use Tax liability on all seminar materials transferred during the presentation of a seminar for which a fee or other charge is made for attendance. See the examples below and Sections 140.101 through 140.109 of this Part for further information. See subsection (f) of this Section for information regarding the tax liabilities of seminar providers conducting seminars for which no fee or other charge is made for attendance. A serviceman's liability may be calculated in one of four ways:

A) Service Occupation Tax on the separately stated selling price of tangible personal property transferred incident to service;

B) Service Occupation Tax on 50% of the serviceman's entire bill;

C) Service Occupation Tax on the serviceman's cost price of tangible personal property transferred incident to service if he is a registered de minimis serviceman; or,

D) Use Tax on the serviceman's cost price of tangible personal property transferred incident to service if he is a de minimis serviceman not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. To determine the proper tax base for seminar materials transferred incident to the sale of service, see the examples below and Sections 140.101 through 140.109 of this Part.

2) A serviceman is considered a "de minimis" serviceman if his aggregate annual cost price of tangible personal property transferred incident to service is less than 35% of his aggregate annual total gross receipts from all sales of service (or less than 75% in the case of servicemen transferring prescription drugs or engaged in graphic arts production). See Section 140.105 for further information.

3) Examples:

A) Unregistered De minimis Serviceman. The seminar provider is an unregistered de minimis serviceman as provided in Section 140.108 of this

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Part (e.g., he is unregistered because he does not sell tangible personal property at retail, nor has he chosen to become registered and remit Service Occupation Tax). He presents a seminar on antiques appraisal in Illinois, and as a part of the seminar provides attendees with a manual, a chart and some graphs. The provider purchases manuals at retail from a bookseller and the charts and graphs are photocopied at the seminar provider's office. The seminar provider incurs Use Tax liability on his or her cost price of the manual (i.e., on the amount charged by the bookseller for the purchase of the manuals). The seminar provider incurs Use Tax on the cost price of the paper and ink used to produce the chart and graphs (i.e., the amount charged by the office supply store for the paper and ink) If tax is not paid to either of these suppliers, the seminar provider must self-assess and remit tax to the Department. See Section 140.108 of this Part. Please note: if the seminar provider were to make any sales at retail, such as a videotape of the seminar sold outside the seminar, or an antiques appraisal booklet sold over the internet, he would not be eligible to pay tax as provided in this Example A and would instead be required to remit Service Occupation Tax to the Department on all his service sales as provided in subsections (b) (3) (B-D) of this subsection.

- B) Registered De minimis Serviceman. A seminar provider presents a seminar in Illinois, and as part of the seminar provides the attendees with a manual, a chart and some graphs. The seminar provider is registered with the Department either because he has chosen to remit Service Occupation Tax or because he makes sales at retail and incurs Retailers' Occupation Tax. He otherwise qualifies as a "de minimis" serviceman. See Section 140.109 of this Part. The seminar provider may remit Service Occupation Tax and any applicable local taxes to the Department on his cost price of the materials transferred as part of the seminar. In this situation, the seminar provider is not authorized to pay tax to his suppliers. He must instead provide his suppliers (the bookseller and the office supply store) with a Certificate of Resale for the purchase of materials transferred as part of the seminar. The seminar provider must register and remit Service Occupation Tax to the Department on his cost price of the manuals, the paper and the ink. If the seminar provider contracts with a print shop to photocopy the chart and graphs, the seminar provider would provide a Certificate of Resale to the print shop and then remit Service Occupation Tax to the Department on his cost price of the charts and graphs (i.e., on a lump sum invoice from the print shop, tax would be calculated on 50% of the total print shop bill).

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- C) Registered Serviceman who are not De minimis; Charge for Materials Not Separately Stated. A seminar provider presents a seminar in Illinois for \$500. As a part of the seminar, he provides the attendees with manuals, a chart and some graphs. The seminar provider is registered with the Department to remit Service Occupation Tax and his annual aggregate cost price of materials transferred incident to service is 45% of his total sales of service (he does not qualify as a “de minimis” serviceman). The seminar provider does not separately state a charge for the seminar materials on the invoice to the seminar attendees. The seminar provider incurs Service Occupation Tax and any applicable local taxes on 50% (\$250) of the total invoice charged to the seminar attendees. However, the tax base cannot be less than the serviceman’s cost price. If the serviceman’s cost price of the materials transferred is \$300, then the serviceman’s tax base is \$300. See Section 140.106 of this Part. In this situation, the seminar provider is not authorized to pay tax to his suppliers. He must instead provide his suppliers with a Certificate of Resale for the purchase of the manuals, charts and graphs that are transferred as part of the seminar.
- D) Registered Serviceman who are not De minimis; Charge for Materials Separately Stated. A seminar provider presents a seminar in Illinois and provides the attendees with a manual and some charts and graphs. The total charge to the seminar attendees for the seminar is \$125, which includes the price of the seminar materials. On the invoice to the attendees, the seminar provider lists a charge for the seminar materials of \$75. The seminar provider is registered with the Department to remit Service Occupation Tax and his annual aggregate cost of materials transferred is 43% of total gross receipts from sales of service (he does not qualify as a “de minimis” serviceman). The seminar provider incurs Service Occupation Tax and any applicable local taxes on the separately stated charge of \$75. However, the tax base cannot be less than the serviceman’s cost price. If the serviceman’s cost price of the materials transferred is \$85, then the serviceman’s tax base is \$85. See Section 140.106 of this Part. In this situation, the seminar provider is not authorized to pay tax to his suppliers. He must instead provide his suppliers with a Certificate of Resale for the purchase of materials transferred as part of the seminar and remit tax to the Department as provided above.
- 4) Servicemen incurring Service Occupation Tax (e.g., subsections (b)(3)(B-D) of this Section) shall collect the Service Use Tax from customers. Although not required unless requested by the service customer, the Service Use Tax may be

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separately stated as a distinct item on the service bill. See 86 Ill. Adm. Code 160.115 for additional information.

- 5) Credit for taxes paid in error to supplier. Servicemen in subsections (b)(3)(B-D) are required to remit Service Occupation Tax to the Department and are not authorized to pay tax to suppliers. However, if tax has been paid to a supplier, the serviceman may take a credit against his Service Occupation Tax liability for taxes paid in error to a supplier for the same tangible personal property which was transferred to seminar attendees incident to service. It should be noted, however, that the serviceman will remain liable for any additional local taxes, if applicable. This would be the case, for instance, if a not-for-profit professional association makes bulk purchases of paper and ink for general administrative purposes, pays Use Tax on those purchases, and then later uses a portion of that paper and ink to photocopy a graphs or charts for distribution at a seminar as provided in subsections (b)(3)(B-D).

c) Seminar Materials – Retail transactions

Transactions in which a seminar provider transfers seminar materials to a person without requiring his or her attendance are subject to Retailers' Occupation Tax liability. The Retailers' Occupation Tax Act [35 ILCS 120] imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.100 et al. The tax base is the selling price of the seminar materials transferred to the purchaser. A seminar provider, however, does not incur Retailers' Occupation Tax liability for materials that are provided to a person who is registered to attend a seminar but who is unable to attend because of illness, inclement weather, or similar event.

1) Examples

- A) A seminar provider presents a seminar on how to capitalize on investments through use of the internet. The charge to attend the seminar is \$400. However, the seminar provider makes the seminar materials available, without requiring attendance, for \$175. Sales of the seminar materials to persons who do not attend the seminar are subject to Retailers' Occupation Tax, and any applicable local taxes, on the \$175 selling price of the seminar materials.
- B) A seminar provider presents a seminar for \$400 on how to buy real estate. During the seminar, the provider transfers manuals to the attendees. The transfer of manuals to attendees during the seminar is considered a sale of service. However, the provider also sells a videotape of the seminar

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presentation along with the manuals at a table outside the seminar room for a reduced selling price of \$200. The sale of the video presentation and manuals is subject to Retailers' Occupation Tax liability, and any applicable local taxes, on the \$200 selling price. The provider's sale of the videotapes disqualifies him from electing to handle his service tax liability by paying Use Tax to suppliers, as provided in subsection (b)(3)(A) of this Section. He must instead remit Service Occupation Tax to the Department as provided in subsections (b)(3)(B-D) of this Section.

d) Non-Seminar Materials – When Subject to Retailers' Occupation Tax or Use Tax Liability

The sale of non-seminar materials by a seminar provider is subject to Retailers' Occupation Tax liability. The gift of non-seminar materials by a seminar provider will result in the seminar provider incurring Use Tax liability on the cost price of those non-seminar materials.

1) Examples

- A) Sales. A seminar provider sells briefcases, coffee mugs, t-shirts, tote bags, and other novelty items. The seminar provider would incur Retailers' Occupation Tax liability including any applicable local tax liability on the selling price of those items. See 86 Ill. Adm. Code 130.100 et al.
- B) Gifts - items. A seminar provider purchases calendars, coffee mugs and tote bags and gives the items to the seminar attendees without charge. The seminar provider incurs Use Tax liability on the cost price of the items given as a gift. See 86 Ill. Adm. Code 150.305(c). A seminar provider may discharge his tax liability on these items by paying tax to an Illinois-registered supplier. If the supplier is not registered to remit tax to Illinois (e.g., the items were purchased over the internet from a supplier not registered to remit tax to Illinois), the seminar provider must self-assess and remit Use Tax directly to the Department.
- C) Gifts – Food and Beverage. A seminar provider presents a seminar on the art of origami. During the seminar, the provider makes coffee and doughnuts available to the attendees at no charge. The seminar provider incurs Use Tax liability on the cost price of the coffee and doughnuts. If the seminar provider purchased the doughnuts and coffee at a local supermarket and paid tax at the time of purchase, his Use Tax liability has been discharged. If the coffee and doughnuts were purchased from a caterer (or other provider of food and beverages, including but not limited



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to, a hotel), the seminar provider's liability is discharged when he pays tax to the caterer. If the seminar provider does not remit tax to a supermarket or caterer as noted above, he must self-assess and remit Use Tax to the Department. See 86 Ill. Adm. Code 150.305(c) for further information.

e) Exempt Organizations – When Subject to Retailers' Occupation Tax, Service Occupation Tax, or Use Tax Liability

1) An organization which has been granted a Department issued E-number pursuant to 35 ILCS 120/1g of the Retailers' Occupation Tax Act may incur Retailers' Occupation Tax, Use Tax, or Service Occupation Tax liability as described in this Section if the seminar presented by the organization is not in furtherance of the organization's purpose. Organizations granted Department issued E-numbers that present seminars that are in furtherance of organizational purposes are not considered to be "seminar providers" for purposes of the tax liability incurred on seminar materials as explained in this Section. However, if an exempt entity engages in selling tangible personal property at a seminar, Retailers' Occupation Tax liability will be incurred on the sale of the tangible personal property unless the selling is one of the three types of limited selling authorized for exempt entities as provided in 86 Ill. Adm. Code 130.2005 (a)(1)-(4).

2) Examples

A) A health services group that has been granted a Department issued E-number presents a seminar on automobile repair. The health services group would be subject to tax under this Section because automobile repair is not an organizational purpose of the group.

B) A church that has been granted a Department issued E-number presents a seminar in furtherance of its organizational purpose on the teachings of religious scholars. The church would not incur tax liability because it is not included in the definition of a seminar provider under this Section when presenting a seminar in furtherance of its organizational purpose.

C) An organization whose purpose is to promote heart health, and that has been granted a Department issued E-number, sponsors a heart health seminar on Valentine's Day. During break, the organization sells red roses as a fundraiser. The charges for the seminar are not taxable because the organization is not considered a seminar provider under this Section when presenting a seminar in furtherance of its organizational purpose. However, the sale of the roses is subject to Retailers'

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Occupation Tax unless it is one of the organization's two annual authorized tax exempt fundraising events.

f) Seminars for which no charge is made for attendance

If a seminar provider does not impose a charge for attendance, no sale of service occurs under the Service Occupation Tax. However, the seminar provider is considered the end user of tangible personal property that she uses to conduct the seminar, including materials that are distributed to attendees and generally incurs Use Tax liability on her cost price of such items. Such items could include tangible personal property that the provider itself uses to conduct the seminar (e.g., a CD used to record information for a presentation; a laser pointer) or items that are provided to attendees (e.g., a binder; legal pads for notes; pencils; pens). In the former instance, the seminar provider is considered the end user of such items because it consumes them in conducting the seminar. In the latter instance, the seminar provider is considered to be the end user of these items because it is a donor of such items to attendees. As a donor, it incurs a Use Tax liability. See 86 Ill. Adm. Code 150.305 (c). If the seminar provider does not pay tax to its suppliers on these items (e.g., it purchased them over the internet from a supplier not registered to collect and remit tax to the Department), the seminar provider is required to self-assess and remit tax to the Department. A seminar provider that has obtained an E-number from the Department and conducts a seminar in furtherance of its organizational purpose may make tax-free purchases of tangible personal property for use at the seminar, including donations, by providing suppliers with its E-number.

(Source: Added at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)